

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CALVIN YUEN,)	CIVIL NO. 07-00116 SPK-BMK
)	
Plaintiff,)	
)	
v.)	
)	
LONGS DRUG STORES CALIFORNIA,)	
INC.,)	
)	
Defendant.)	
_____)	

ORDER OVERRULING OBJECTIONS AND ADOPTING REPORT OF
SPECIAL MASTER

On August 3, 2007, U.S. Magistrate Judge Barry M. Kurren issued Findings and a Recommendation that the case be dismissed without prejudice under Rule 25(a) of the Federal Rules of Civil Procedure because the Plaintiff has died. Defendant has objected under LR 74.2 and 28 U.S.C. § 636(b)(1)(B). Defendant asserts that the case should be dismissed under Fed. R. Civ. P. 41(a), and that under Rule 41 voluntary-dismissal standards, it would be entitled to an award of costs or fees as a condition of the voluntary dismissal.

Upon de novo review of Judge Kurren's Findings and Recommendation, and of the objections and responses, the Court OVERRULES the objections and

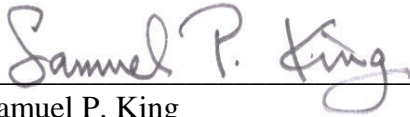
ADOPTS Judge Kurren's Findings and Recommendation. The Court is convinced that Rule 25 is the proper rule to apply under current circumstances (i.e., death of plaintiff, non-substitution of a plaintiff, parallel lawsuit now pending in state court). In any event, having reviewed the filings and docket of prior proceedings, the Court would not be inclined to award any costs or fees against a deceased plaintiff in this case under Rule 41 as a condition of dismissal.

As recommended by Judge Kurren, the action is DISMISSED without prejudice.

IT IS SO ORDERED.

DATED: September 18, 2007.




Samuel P. King
Senior United States District Judge